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REPUBLICAN DIGNITY: THE IMPORTANCE OF TAKING OFFENCE

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ABSTRACT. This paper analyses the republican notion of non-domination from the viewpoint of individual dignity. It determines the aspect of individual dignity that republicans are concerned with and scrutinises how it is safeguarded by non-domination. I argue that the notion of non-domination as it is formulated by Pettit contains a number of ambiguities that need to be addressed. I discuss these ambiguities and argue for specific solutions that place great importance on a person's moral beliefs and his status as a moral being amongst others. Furthermore, I argue that the impunity interpretation is to be favoured over the immunity interpretation of non-domination. I show that whilst these solutions accord well with many important republican tenets, they have other implications that contradict known republican positions. In particular, I show there is both room and a need for retributivism within republicanism.

I. INTRODUCTION

The importance of dignity is acknowledged by most important philosophical doctrines (with the possible exception of utilitarianism). It is also asserted in a number of key political documents (e.g. the UN Universal Declaration of Human Rights, the Geneva Conventions and the German constitution). Nonetheless, even though papers and arguments that rely on or use the notion of dignity are plentiful in law, political science and philosophy, surprisingly little conceptual analysis of this key notion has been published (exceptions include Meyer (1989), Kolnai (1995) and Shultziner (2003)). Concepts typically associated with dignity include autonomy, freedom, the now somewhat outmoded notion of honour, integrity and self-

respect. The notion also carries a certain air of majesty, and can in some ways be connected to the notions of control, (self-) mastery and sovereignty.

Clearly, it is a notion of great importance, but a multifaceted one. Rather than trying to develop an all-encompassing account at once, it therefore seems appropriate to take a more piecemeal approach. In this paper I concentrate on one such particular aspect of dignity. This aspect, which focuses on a person's ability to resist intrusions into his own affairs, is of particular relevance in republican thought, such as the writings of Quentin Skinner (1998, 2006) and Philip Pettit (1997, 2001a, 2002). I therefore use the term 'republican dignity' to refer to this aspect of dignity. After introducing the notion of non-domination as it has been advocated by Pettit (section II), I scrutinise it in its relation to individual dignity (section III). I argue, however, that the way non-domination has been explicated by Pettit contains at least two ambiguities that need to be addressed – the precise meaning of 'avowed or readily avowable interests' (section IV) and what it means to be 'forced to track' these (section V). I defend specific interpretations of these ambiguities, and conclude the paper by discussing their implications (section VI). Many of these accord well with familiar republican positions, such as the importance of discourse and contestability, but some other implications are less uncontroversial. In particular, I argue that retributivism should be regarded as an essential aspect of a republican criminal justice system – a result that directly contradicts Pettit's own position (Pettit 1997; Braithwaite and Pettit 1990).

Focusing on one particular aspect of dignity has a number of advantages, the most important being that it makes the subject matter manageable. Furthermore, analysing different aspects of the notion in turn makes possible to see where the difficulties lie in a more encompassing analysis of the concept. To some degree, different aspects of the notion of dignity may "pull" in different directions, or have seemingly opposite implications that will have to be reconciled. It should also be mentioned, though, that focusing on one such aspect means that the analysis may have to depend in part on certain other aspects of

the notion of dignity that have not yet been analysed or sufficiently developed. In such partial analyses it is often unavoidable that a certain amount of vagueness is introduced, which may cloud the discussion somewhat. For instance, when one focuses on the ability to resist intrusions into one's affairs, this only seems relevant if it is assumed beforehand that one wants to resist certain such instances. Some people, such as happy slaves and human doormats, may lack this inclination to resist. Such cases are indubitably problematic when it comes to the dignity of the individuals concerned. However, it is not the specific aspect of dignity that is the subject of this paper which is at stake in such cases. Rather, it seems that this is a matter of the aspect of dignity that connects it to (proper) self-respect. Where such dependencies occur in my analysis, however, I have tried to make it explicit in the text.

II. NON-DOMINATION

The republican notion of non-domination is usually analysed in relation to freedom (see e.g. Pettit 1997, 2001a, 2002 and Skinner 1998, 2006). In this paper, however, I scrutinise it in its relation to individual dignity. Modern republicans such as Pettit and Skinner have themselves instituted this focus on freedom by claiming that theirs is a notion of freedom that is distinct from (what they call) the liberal notion of freedom. This latter notion equates freedom with the absence of interference, and the republican claim that this notion is inadequate has prompted a vigorous reply by its advocates (see, for instance, Carter 1999, 2008, Kramer 2003 and Goodin 2003). However, many of the republicans' arguments in favour of their notion of freedom, explicated by Pettit through his notion of non-domination, also reveal a clear concern for individual dignity. The main assumption underlying this paper is that republicans care about freedom as non-domination because they care about individual dignity. In this paper I try to identify just what notion or aspect of individual dignity they are trying to safeguard through their advocacy of non-domination. I am thus not directly concerned with the debate between republi-

cans and their adversaries on freedom and non-domination. As the notion of non-domination is most thoroughly discussed within this debate, though, it does form the starting point of my analysis. I am concerned with this debate on freedom, however, only insofar as it provides insights into the republican view of dignity.

The republican notion of freedom as non-domination is a purely social notion of freedom. Whether someone is free or not, is – to republicans – determined completely by the relation in which he stands to others. A person is dominated, according to Pettit, if someone else holds arbitrary power of interference over him, and this arbitrary power Pettit defines as follows (2002, pp. 341–342):

[S]omeone has an arbitrary power of interference in the affairs of another so far as they have a power of interference that is not forced to track the avowed or readily avowable interests of the other [...].

A person is said to be free in the republican sense if no-one holds such arbitrary power over him, i.e. if he is not dominated.

According to republicans such as Skinner and Pettit, the standard, liberal notion of freedom as non-interference has two major deficiencies, which the republican notion of freedom, with its focus on the *possibility* of *arbitrary* interference, is said to solve. First, as the liberal notion of freedom holds a person to be free as long as he is not interfered with, it disregards the fact that a person's freedom can be curtailed as soon as a person *can* be interfered with, even if the person who could do so chooses not to. Advocates of the liberal notion of freedom disregard the debilitating effects of the mere possibility that one may be interfered with, even if this possibility is not actualised, or so republicans argue. If you know another person has the ability to interfere with you at her leisure, this creates a great level of uncertainty on your part. You will not be able to rely on your present abilities, as the other person's possible interference hangs over you like a sword of Damocles. This uncertainty is disabling enough in itself, as it hampers you setting and pursuing long term goals, but it also gives you a strong incentive to try and influence the wielder of this arbitrary power. You will, for instance, become very careful about your

choice of action because you do not want to engage in activities on which your dominator frowns. You will not do many of the things you could do, just because you want to maintain her good graces. Furthermore, in seeking her favour, you may be forced to engage in rather nauseating feats of sycophancy. Advocates of the liberal notion of freedom have challenged the view that their notion of freedom disregards these aspects (see e.g. Carter 1999, 2008 and Goodin 2003), but for the purposes of this paper it is more important to note that most, perhaps even all of these criticisms are just as problematic when regarded from the point of view of individual dignity as they are from the point of view of liberty. Moreover, it is not just because of the effects it has on individual behaviour that republicans are concerned with non-domination. What you will, can, or cannot do when you are in such a position is important enough, but such issues are derivative and secondary. The primary problem, according to republicans, is that when one is dominated such issues are *up to someone else*. A dominated person is not his own master, and being dominated is therefore humiliating in and of itself.

Pettit's choice of words shows a clear concern with individual dignity: people who are dominated are 'demeaned by their vulnerability' (Pettit 1997, p. 5), and non-domination is to be furthered because it allows people to 'look the other in the eye' and ensures that 'they do not have to bow and scrape' (Pettit 1997, p. 87). The historical excerpts Pettit cites often also combine the importance of liberty with a clear concern for dignity, e.g.: 'An exterior Power claims a Right to govern us, and have for a number of Years been levying an illegal tax on us; whereby we are *degraded* from the rank of Free Subjects to the *despicable* condition of Slaves' (cited in Pettit 1997, p. 34, emphases added). The republican concern with dignity is shown most explicitly, though, in the following citation (Pettit 2002, p. 351): 'The terrible evil brought about by domination [...] is that it deprives a person of the ability to command attention and respect and so of his or her standing among persons.' Domination robs people of their dignity.

There is a second way in which the republican notion of non-domination differs from the liberal notion of freedom as absence of interference, which is also highly relevant to understanding their concern for dignity. To republicans the nature of an interfering act is vital, as they claim only *arbitrary* interference limits your freedom. Therefore, some interfering actions – those of the non-arbitrary kind – do not curtail your freedom.¹ This raises some interesting conceptual issues regarding the adequacy of the republican notion of freedom as non-domination as a *freedom* conception (see e.g. Carter 2008), but this paper focuses exclusively on individual dignity. I shall therefore not address such questions, but if I am correct in my assumption that republicans care about non-domination because they care about individual dignity, then such non-arbitrary interferences should be unproblematic when regarded from the viewpoint of dignity as well. What exactly makes an instance of interference arbitrary or non-arbitrary is of course a most pressing matter in this regard, and the following sections are dedicated to addressing this question.

III. NON-DOMINATION AND DIGNITY

Before we can proceed we need to understand exactly how (non-)domination affects a person's dignity. As the quotations from Pettit show, a fundamental aspect has to do with the ability to resist intrusions by others. To be dominated is to be vulnerable; if you are dominated someone else can do with you as she wishes – at least with respect to specific areas of your affairs. To be non-dominated, therefore, means that one is able to resist those intrusions into one's affairs that one rejects. What republicans have in mind when they seek to free dominated people from their yoke is a form of empowerment. One

¹ Not all republicans hold quite such a black-and-white view. Skinner, for instance, is of the opinion that to be free requires that one is free in both the republican and the liberal sense. Pettit, by contrast, prioritises the republican notion of freedom (Pettit 2002).

should be able to '*command* attention and respect' (Pettit 2002, p. 351, emphasis added). In some ways this concern is similar to Feinberg's when he stresses the importance of a concept of rights (1970). Having a concept of rights is vital, so Feinberg claims, because it enables people to demand their due, rather than request it. However, while having a notion of rights may be a necessary condition for being able to stand up for oneself it certainly is not sufficient. One must also be able to assert one's rights if one thinks they are being violated. A dominated person lacks this ability, not because he lacks a notion of his rights but because the power of his dominator acts like a knife to his throat.

It should be stressed, though, that the empowerment non-domination provides is primarily a defensive ability. It enables persons to ward off intrusions into their affairs if they choose to, but it does not necessarily provide them with abilities to pursue other goals, while it certainly should not enable them to subjugate others. According to Goodin, a critic of republicanism, the republican ideal (both in its historic and more modern forms) is 'the sturdy man of honor, relying only on the strength of his own arms' (2003, p. 66, referring to Slote 1993). Formulating the neo-republican ideal so directly in terminology that belongs to the republican thought of centuries ago is probably something of a caricature, but like all good caricatures, it contains an important element of truth. Republicans clearly feel that as an individual you should have the ability to ward off intrusions into your affairs purely on the ground that they are *your* affairs and that *you* do not want these intrusions. This is indeed an important ability. It is hard to conceive of a society taking the rights and status of individuals as moral beings seriously if there are no areas in which the individual alone gets to decide whether someone else may interfere with his activities; and when people do get to interfere with you in ways you regard as objectionable, and you are powerless to do anything about it, this powerlessness does affect your dignity and standing. Having to stand idly by as people bulldoze your rights as you see them is profoundly humiliating.

As the republican notion of dignity is concerned with a social aspect of dignity, it is concerned with a person's status amongst others (now usually assumed to be one of equality). Whereas the notion of status is purely a matter of one's position within society, the notion of dignity is more complicated as it also involves a highly personal aspect. The social aspect of a person's dignity is not only concerned with the status he has, but also with the way he deals with the implications this brings with it. It means, for instance, that one has to live up to the duties that come with one's status. What is more important for the analysis of the republican notion of dignity, though, is that a person's status has consequences for how others must, may, and in particular may not, behave towards him. A dignified person's role is not purely passive here. As Pettit's insistence on the importance of being able to *command* respect and standing shows, a person's dignity requires him to take an active stance. If a person wrongfully intrudes into your affairs it is not just his intrusion that offends; it also constitutes an affront to your dignity because you *take* offence.² Of course, your dignity is also at issue when you fail to take offence when you ought to – as the aforementioned example of the human doormat shows – but this is not the aspect of personal dignity with which non-domination is directly concerned. The republican notion of dignity emphasises the importance of this active element in that it enables people to respond to hostile intrusions, but it is not immediately concerned with the problem that some people may still fail to make use of this ability even if they have it. It is important for people, if they are to be able to regard themselves as full, actively participating members of a society, that they

² Duff and Marshall (2006) discuss a number of different ways in which a person can take offence. The kind of offence I am discussing here falls under what they call mediated offence resulting from the violation of a moral standard. The way I use taking offence is slightly more restrictive than the way they use it, however, as it not only requires that a person judges 'some standard or value that [he] take[s] seriously' (Duff and Marshall 2006, p. 60) to be violated, but also that he considers *himself* wronged by this violation (see also footnote 8).

can take offence when they feel they are wronged, and make sure this wrong to their person is addressed.³ People who are dominated lack this power. As a result, this vulnerability makes it impossible for them to feel secure about their position in society so they cannot consider themselves a full member of it, experiencing society in terms of oppression or alienation.⁴

Those critical of the republican ideal of non-domination may point out, however, that there is far more to dignity than this ability to ward off or respond to unwelcome intrusions into one's affairs. One can tarnish one's dignity even if one does have this ability, as when one uses it to keep others from interfering when one engages in self-degrading activities, for instance. Furthermore, as Goodin points out in relation to

³ The ability or power to take offence, as I use it, is thus not just a power of judgment (the judgment that one is wronged by another), but the ability to act on that judgment and have the wrong addressed. Whether one genuinely has such an ability is both dependent on the personal costs involved in taking such action (which must not be prohibitive) and on the prospects of achieving what one sets out to do. To some degree the republican call for empowerment is similar to points made by advocates of positive liberty and autonomy (such as Raz 1986, Taylor 1997, Rawls 1999, O'Neill 1989, Crocker 1980, Dworkin 1988). There are, however, important differences from such accounts, which typically focus on people setting and pursuing their own goals or way of life, or living according to rules and principles they set for themselves. Non-domination is not focused on one's ability to choose and pursue goals, but exclusively at the relation in which one stands to others. Furthermore, a person who stands up for himself and resists intrusions into his affairs is not just asserting certain principles or rules for himself (the Kantian notion of self-legislation); he is first and foremost asserting that the rules and principles he asserts are binding on others.

⁴ As Goodin's characterisation of the republican ideal shows, the notion of republican dignity is in some aspects very close to the notion of honour. There are differences between these notions, though. I do not wish to go into the details of the notion of honour here, but one of the important differences between the republican notion of dignity and honour is that the latter deals exactly with the question of when a person ought to take offence, whereas the republican notion of dignity is solely concerned with the ability to assert oneself if one does so. Many nowadays regard the notion of honour as outmoded, but one way of interpreting the importance of republican dignity is that it enables individuals to uphold their honour. A more modern interpretation is that it enables people to uphold their place in society as a moral being amongst others.

honour codes and shame societies, such an ability may be misused if one has flawed beliefs about which intrusions are legitimate and which are not (and which responses are then called for), so that one takes offence when one ought not (see also Meyer 1989). This is undoubtedly true, and republicans have readily admitted that their call for non-domination presupposes that people entertain a somewhat adequate view of how they should be treated by others and how they should comport themselves. As Pettit puts it: 'Embrace the life of a sect who abase themselves before some self-appointed guru and you will see little in the ideal of freedom as non-domination' (Pettit 1997, p. 97). But it should be emphasised that the fact that such an ability may be misused (or fail to be used) by persons who lack a proper sense of self-respect or who entertain flawed moral or political beliefs in no way disqualifies it as an important ability for those who do not. The republican notion of dignity certainly does not capture all there is to say about dignity, but it does nonetheless identify an important aspect of the concept in its emphasis on the ability to respond to intrusions into one's own affairs, and it is this particular aspect of an individual's dignity with which non-domination is directly concerned.

IV. DIGNITY AND INTERFERENCE

Thus far, I have described the ideal of republican dignity mainly in terms of an individual's defensive ability. What is also clear from Pettit's definition of non-domination, however, is that there are intrusions into a person's affairs against which such a defensive ability is not required. If someone interferes with you, or has the power to interfere with you, in a way that must track your 'avowed or readily avowable interests', this does not cause affront to your status and dignity, or so Pettit claims (Pettit 2002, p. 350). However, whether such interference is truly unproblematic when it comes to your dignity depends on how you interpret 'avowed or readily avowable interests'. As the following shows, this notion is ambiguous and, consequently, one can meet the requirements of this definition whilst still causing affront (and hence one can cause affront even if one

is forced to meet these conditions). To solve this problem I argue for a reformulation of the notion of non-domination that is partially derived from the way Pettit described the notion of non-domination in his earlier works.

One kind of well-intended interference that is incompatible with a person's dignity is, of course, paternalistic interference. Few things are as demeaning as someone else getting to decide unilaterally what is good for you and interfere with you accordingly. At first glance, Pettit's formulation seems to rule out paternalistic interference, however, as he demands that the interests a person should be forced to track when she gets to interfere with you are not merely your interests as she sees them, but the interests *you* perceive as such (i.e. your 'avowed or readily avowable' interests). As the following example shows, though, this requirement is still insufficient to prevent the possibility of humiliating and offensive intrusions. Suppose I am a smoker. Suppose furthermore, that even though I regularly indulge in this habit, I do not deny the harmful effects this has on my health, so that I avow, or would avow if so asked, that smoking is indeed bad for me and harmful to my interests. According to Pettit's formulation of non-domination, this avowal would provide someone else with sufficient legitimation to interfere in my smoking.⁵ Yet I somehow suspect that if you were to go out on the street armed with a fully loaded water pistol looking for people who are about to light up and prevent them from harming their readily avowable interests, you would encounter a considerable amount of righteous indignation. Furthermore, this indignation is not based on the fact that their interests are harmed, but on the fact that they feel you have no right to interfere with them in that manner and that, when you do so, you are grossly offending them. When pressed, they may even agree that your interfer-

⁵ At least, just as long as the means by which she does this are not more detrimental to my interests than my smoking.

ence *is* in their best interests, while nevertheless maintaining their rejection of your interference.⁶ In this way, it therefore seems that the definition of non-domination as it stands is insufficient to safeguard a person's dignity because arguably it would allow for this kind of interference. After all, you may quite plausibly argue that your squirting interference is tracking their avowed and certainly their readily avowable interests, as they have avowed that smoking is harming their interests and all you have done is prevent this harm from occurring.⁷ I doubt that this is what Pettit has in mind, so a specification of what exactly is meant by 'interests' is called for.

In his earlier works (e.g. Pettit 1997) Pettit did not use the definition of non-domination we are using here, but formulated domination in terms of interference that does not track your 'interests *and ideas*' (my emphasis). Whether or not this change is intended to be a significant change to the concept of non-domination is unclear, but either way it raises the question of what we are to make of the 'and ideas' part of this earlier formulation. One possibility is that the later formulation uses a broader notion of interests, which regards one's ideas as part of one's interests. The other possibility is that Pettit deliberately distinguishes between interests and ideas, but that he no longer regards ideas as relevant to domination, having added the phrase 'avowed or readily avowable' to prevent certain instances of paternalism. Both interpretations are problematic, though, because, as the remainder of this section shows, whether or not an interfering act constitutes an affront to one's dignity depends primarily on one's ideas and much less on one's interests.

⁶ It is important to stress that the crucial point of this example is that even those smokers who agree that your interference is tracking their avowed or readily avowable interests can legitimately take offence because of your interference. Of course there will be smokers who highly value the activity of smoking for some reason or other, so that they will avow that being allowed to smoke is in their true interests and thus reject the interference on those grounds, but that is beside the point here.

⁷ I am assuming you are a perfect shot, so that their interests are in no further way affected by your interference other than that they are unable to light up.

If we take the latter interpretation and define interest in a narrower sense, problems like the smoking example are unavoidable. For interference to be compatible with your dignity it has to be such that it does not cause affront, while its tracking your interests – even interests you avow – is not always sufficient to avoid affront. This is so, for instance, because one may hold dearly to the option that one can act against one's own interests as thus conceived. It may be argued, for example, that if you interfere in line with my (avowed) interests, you still deny me the choice to do as I see fit. It may be that I then – due to your interference – do what I think I should have chosen to do anyway, but in an important way the choice is no longer mine. Your interference has robbed me of this choice, and this choice itself may be important to me. I may, for example, greatly value the freedom to smoke independently of having any desire to smoke (cf. Carter 1999, pp. 41–60). This argument is intuitively most plausible if I would indeed have chosen the action you now forced me to take, but it holds even if I know I would have chosen the option you took from me. I may hold such a choice dear even if it leads me astray. This is not because the choice necessarily enables me to pursue my interests better (clearly, if I know I shall make the wrong choice it doesn't), but simply because I regard the choice as mine to make (as I think is the case for most smokers who object to being prevented from smoking: their objections have far less to do with their interests than with what they see as their right – even if it is a right to harm themselves).

If an instance of interference can cause affront by the mere fact that it takes from you a choice you regard as yours to make, this shows it is primarily your beliefs on which choices are yours to make that should be tracked if we want to make sure that an instance of interference is unproblematic from the standpoint of republican dignity. One can quite legitimately take offence purely based on these beliefs, without ever having to refer to one's interests. Of course, one could argue that in such cases one's true avowed interests are the ability to choose whether or not to smoke, and not 'not smoking'. Even if this is so, however, one still has to grant that the term 'interests' is ambiguous and confusing. Furthermore, as it is your ideas on

what choices are yours to make that make this your true avowed interests, we may in such cases argue that interference should track your ideas just as well as we may argue that it should track your interests. Moreover, it should be noted that identifying a person's true avowed interests with having choice as such comes very close to a straightforward appeal for negative, liberal freedom; as republicans are adamant that they are not arguing for pure negative liberty, it seems unlikely that this interpretation is to be favoured.

One may go even further, though, arguing that 'interests' in the narrow sense may not be directly relevant at all when it comes to preventing affront. Suppose, for instance, that on some faraway island an imminent natural disaster threatens the lives of the local population. Suppose furthermore that you neither have, nor ever will have any dealings with these people. Your government decides to help these islanders, but in order to fund the rescue effort they have to levy a substantial extra tax. This extra tax prevents you from engaging in certain activities dear to you. In such a case it is quite plausible that you will regard this tax as going against your avowed interests, and it obviously interferes with you, but you do not feel this interference causes affront to your person. You may feel, for instance, that the government's rescue efforts legitimise this harm to your interests. Of course it may also be the case that you do regard such a government intrusion into your financial affairs a grossly illegitimate act of government interference if your beliefs are that governments have no standing to enforce such activities – for instance because you feel this should be left to voluntary contributions. This again reinforces the point: it is only your ideas and moral beliefs about the interference, and not your interests, that determine whether an instance of interference can cause affront to you.

Of course I do not seek to claim that one's interests and one's ideas are completely independent. Quite often one's interests will shape one's ideas, and one's ideas may in turn influence what one regards as one's interests. The arguments above do show, however, that when it comes to dignity it is first and foremost your beliefs and ideas that those who are in a position

to interfere with you should be forced to track and not your interests. Of course it is possible to use the term interests in a broad way so that it is taken to include such beliefs. But if it is one's ideas on the interference that determine whether or not it constitutes an affront to one's dignity, then referring to an ambiguous notion such as interests is at best highly undesirable as it only serves to elicit confusion. To refer to one's ideas about the interference has the added advantage that the manner in which the interference came about can be accommodated, too. To refer to interests suggests that all that matters, if we are to judge the possible dominating nature of an instance of interference, is the ultimate effect of the interference. But your personal dignity may be affected by the way the interference is implemented, as well as by the identity of the interferer. Someone with whom you have a close personal relationship, for instance, or those whom you regard as legitimate authorities on the issue at hand may interfere with your affairs in certain ways without causing affront, where there would be great affront if some random stranger acted that way. If we take a person's ideas on the interference as the guiding principle, rather than the vaguer notion of his interests, it is immediately clear that we can take this into account.

We are now in a position to specify the notion of domination in such a way that non-domination does indeed exclude the kinds of affront to a person's dignity that concern republicans (and avoid a source of substantial confusion) by emphasising the part of Pettit's earlier formulation that underlines the importance of a person's ideas on the interference in his affairs: a person B is non-dominated if there is no person (or institution) A that has the power to interfere in the affairs of B without being forced to track B's moral views on that interference.⁸ This reformulation clearly stresses the subjective

⁸ It should be mentioned that the moral beliefs of B to which we are referring here concern only his beliefs about how *he* is to be treated. It is possible that B regards instances of interference as wrongful for reasons that have nothing to do with him or his views on his status as a person. If this is the case, then he still remains undominated even though his moral beliefs are in a way not tracked. The notion of dignity that republicans are concerned with is in a way highly personal: it is between you and your interferer.

element of dignity. Obviously, this will lead to a number of complications – more on this later – but it does help solve another problem. In the previous formulation, what constitutes a person's own affairs was quite unclear. Now we are focusing on the judgment of the dominated person about the interference it is clear that we should focus on the person's own affairs as he sees them: republican dignity can then be conceptualised as the ability to ward off, or respond adequately to, treatment one considers wrongful to one's person.⁹

This formulation of non-domination refers to a person's *moral* views rather than their ideas in general, as one's moral views determine whether or not one deems it proper to take offence. If we were to use a more general notion of personal opinion, by for instance excluding any interference one does not want in some sense, we would fail to capture the specific poignancy of the intrusions with which republicans are concerned. The mere fact that someone is subjected to unwelcome interference is not enough to cause an affront to his dignity and status. Unwelcome events (interferences or otherwise) are a fact of life, but do not as such inflict the injury that is done when people are treated in a way they deem wrongful to their person.¹⁰ A person's moral beliefs about how he is to be treated are a different matter, however. These beliefs are vital to allow him to regard himself as a moral being amongst others and to consider himself a full member of the society in which he lives, rather than an outsider. If you are subjected to interference you deem wrongful to your person, your status as a moral being is at issue, as it is your moral beliefs that are neglected in a directly personal way; such an insulting intrusion cuts much deeper and causes injury to a person at a much more fundamental level than merely being subjected to an unwelcome instance of interference (Pettit 1997, p. 84).

⁹ Exactly what constitutes an adequate response, of course, depends on the concrete intrusion and the circumstances in which it occurs.

¹⁰ Of course, some people may claim that nothing may be done to them that they do not want, but in that (rather extreme) case their moral beliefs and their wants will coincide by definition. They will deem themselves wronged whenever someone interferes in a way they do not want.

V. IMMUNITY VS. IMPUNITY

In the previous section I have argued that we should focus on a person's moral beliefs or ideas, rather than his avowable interests if we analyse non-domination from the point of view of individual dignity. There is a second aspect of the notion of non-domination that requires closer scrutiny, however: the precise meaning of 'being forced to track' these ideas. I do not address the issue of what exactly constitutes tracking, but rather focus on how we should interpret this notion of 'being forced to' do so.

There are at least two ways in which we can take this notion, both of which can be supported by excerpts from republican writings. The first interpretation focuses on the fact that domination is first and foremost a *power* relation, so any problems resulting from it can be resolved by taking away the dominator's ability to interfere. Some republican texts do suggest this interpretation, as they claim that what is demeaning about domination is that one is subjected to the will of another (see e.g. Pettit 2002, Skinner 1998). This interpretation is problematic, though, as it is hard to conceive of the mere fact that someone can choose to interfere with you if she forms a determined will to do so as a demeaning form of vulnerability. There is little demeaning, for instance, about the fact that the group of friendly youths outside my office building could, if they were truly determined to do so, decide to stop me from leaving the building. Clearly, making all such possible interferences truly impossible even if people form determined wills to perform them would require draconian measures that would restrict social interaction beyond all viable limits, since social life is full of such possibilities (cf. Carter 1999; Kramer 2003). If this is how we were to interpret the power to interfere arbitrarily, the republican ideal of freedom as non-domination would become the freedom of the paranoid. Anyone who could possibly be out to get you – and to the truly paranoid that means everyone – must have their ability to interfere with you removed. This is therefore not, I take it, how we should interpret the notion of non-domination, and there are clear indications in republican texts that what they have in mind is indeed something less radical. What makes being at the mercy of someone else's will problematic is not so much the fact that,

should she truly decide to interfere with you she would succeed, but that she would be able to do so with impunity (see e.g. Pettit 1997, p. 58, 93; 2001a, p. 79; Skinner 1998, p. 72).

Interpreting non-domination in this fashion, we emphasise the importance of arbitrariness, rather than emphasising the power or ability element in the definition of non-domination. To have a power to interfere arbitrarily is to be able to interfere with impunity. This, however, has implications, especially for the function of the criminal justice system and the role of penal law. To be able to do something with impunity is to be able to do something without being punished for doing it. To ensure that someone cannot do something with impunity one would either have to make sure she cannot do it (incapacitation), which, as argued above is as a general approach unfeasible, or ensure that if she does transgress, she will subsequently be punished for it. Punishment can only follow a crime that has been committed, however, and this *ex post* nature of punishment has an important, often overlooked and possibly at first sight counterintuitive implication about when an interfering act constitutes an act of domination. In an important way, the notion of non-domination thus conceived allows us to determine the past. As an interfering act is only an instance of domination if it is done with impunity (i.e. remains unpunished), we get to decide at a time $t + \epsilon$ whether a transgression against a person committed at time t is to be an act of domination by deciding whether or not to punish the perpetrator.¹¹ If we fail to punish him, then he interfered with impunity, which makes his act an act of domination, whereas if we do punish him, then clearly he did not do it with impunity.

This, however, has a further implication, which is striking because it directly contradicts Pettit's own expressed view of republican sentencing policy. Braithwaite and Pettit (1990),¹² who as avowed consequentialists dismiss deontic considerations,

¹¹ For more on the possibility of changing the nature of past acts see Peijnenburg (2007).

¹² It is worth noting that though the notion of impunity plays an important role in Pettit's later work, Braithwaite and Pettit (1990) hardly mentions the notion at all, and when it is mentioned (p. 118), it is discussed dismissively.

explicitly reject the principle that all those found guilty of a crime should be punished in accordance with the severity of the crime (i.e. not below and not above a certain level) – this principle is known as the retributivist principle or the principle of just deserts. Braithwaite and Pettit agree with the retributivists that a person may not be punished above the level that his crime warrants, but claim the position that he should not be punished any less lacks all grounds and that the notion of just deserts is therefore inherently flawed. Instead, Braithwaite and Pettit favour a presumption of parsimony, claiming that the costs of punishment are vast and the benefits in terms of non-domination ‘are almost always of a distant and probabilistic character’ (p. 87). The argument above, however, shows that we can use the republican principle of non-domination as an underpinning of the retributivist position that those found guilty of a crime need to be punished, at least when the victim so demands, and not below a certain level. Under the impunity interpretation of non-domination, crimes as such do not constitute acts of domination: only unpunished ones do. Because punishment immediately prevents a past transgression from becoming an act of domination, the benefits of punishing the perpetrator are neither distant, nor particularly probabilistic, which refutes, at the very least, the presumption of parsimony.¹³

¹³ If and how the three principles for punishment Braithwaite and Pettit advocate (recognition of the wrong done to the victim, recompense and reassurance), can be reconciled with the retributive principle in a coherent theory of punishment requires more detailed analysis than is possible here. It is important to mention, however, that none of the principles advocated by Braithwaite and Pettit strictly qualify as punishment (cf. Duff and Marshall 2006, p. 71), and hence that they do not directly affect the impunity of the transgression. My main aim is to argue that there is room and need for the retributive principle of punishment within a republican theory of punishment designed to ensure non-domination, and thus that the presumption of parsimony must be replaced by a presumption of punishing the guilty. This leaves open the possibility that there may be particular situations in which the indirect, mostly forward-looking, effects of the principles advocated by Braithwaite and Pettit outweigh the direct effects on (non-)domination of punishment. This, however, will need to be shown on a case by case basis. The direct effects of punishment on the non-domination of a victim of a transgression are sufficient to put the burden of proof on those who wish to refrain from punishing the perpetrator in accordance with the severity of the crime.

It is important to stress that this argument in favour of retributivism is different from the notions of retributivism discussed and rejected by Braithwaite and Pettit, as the emphasis is much more on the dignity of the victim. In the retributivist account to which Pettit and Braithwaite are most sympathetic, that of Jean Hampton (Murphy and Hampton 1988), the perpetrator's crime is viewed as an assertion of superiority over the victim. In her view, retribution is then called for to refute this claim by the perpetrator and re-establish their equal footing. Pettit and Braithwaite have some sympathy for this view but point out that it is hard to interpret all crimes, especially relatively minor ones, as claims to superiority over the victim. This may be true, but even if it is unlikely that a minor crime like petty theft is a claim to superiority – I indeed seriously doubt that perpetrators think of their actions in such a way – it nonetheless does constitute a denial of the status of the victim as a person whose rights and dominion are to be respected. In general, such intrusions will be much less in cases which affect a person's property like theft than they will be in cases where grave violence is involved which directly harms his physical person (Braithwaite and Pettit 1990, p. 102); but as any victim of theft can tell you, being treated in such a way *is* personal (even if, or perhaps especially when, the perpetrator does not see it as such). The republican argument for retributive justice from dignity does not, however, need to regard the offence by the perpetrator as a claim to superiority. All it needs is that a crime constitutes an infringement of the status and personal sphere of the victim, and this is clearly the case. Almost any crime for which the victim deems it necessary to address the criminal justice system will involve a personal injury to the victim, part of which is the legitimate feeling of being wronged and therefore offended. It may be true that thieves and burglars generally do not think of their victims at all, but this does not mean that such neglect does not constitute a significant personal affront to the victim. One can quite appropriately take offence at an interfering act that does not have 'causing offence' as its motivation (cf. Duff and Marshall 2006). By punishing the perpetrator, society cannot take away this injury,

as it is a personal matter between the perpetrator and her victim. It can, however, ensure that it does not add insult to injury by failing to prevent this offence from being an instance of domination by ensuring it was not done with impunity.¹⁴

VI. DISCUSSION

For any political theory one of the most difficult questions is how to deal with persistent moral disagreement. Republicanism is no different in this regard. In fact, the notion of non-domination places this disagreement at the forefront and, by making it so prominent, it offers important insights that help us analyse and address such issues. The notion of non-domination focuses on a person's moral beliefs as they are,¹⁵ which means that even the views of people who hold rather eccentric or even objectionable moral beliefs are recognised as relevant purely because they are held by those persons. To respect people as moral agents is to hold that their moral beliefs are relevant, whatever they may be. Of course, this greatly complicates matters. Developing a political theory is much easier if one were, for instance, to restrict the analysis to those moral beliefs which are deemed reasonable, rational or in some other way acceptable. Such approaches, though, depend on some predetermined standard of acceptability, rationality or reasonability and the existence of moral disagreement can itself be a sign of the absence of consensus about such a standard. Moreover, such an approach cannot but be extremely disrespectful of those who hold views that deviate from it. It is one thing to tell a person his moral beliefs are flawed – after all, since human beings are flawed beings, it is more than likely that we all hold at least some moral beliefs that are flawed in some way – but to say that

¹⁴ It is important to stress that punishment does not have a restorative function in this account. Retribution is called for in this account because it *prevents* a specific injury to the victim (that of being dominated), it does not undo it.

¹⁵ Though making moral judgments is clearly a normative endeavour, what a person's moral beliefs are, is a matter of empirical, objective fact. Whether such beliefs are tracked, or whether a person judges himself wronged are therefore also purely empirical matters that in principle allows for a completely non-normative description.

his moral beliefs are not even worthy of consideration is a matter of quite a different order. If you tell a person his moral beliefs, especially those directly concerning his person, do not even warrant consideration, you cannot maintain that you truly take him seriously as a full moral agent.

Republican writers have offered important methods that help deal with such conflicts. One of these is Pettit's notion of contestability. If each person has the ability to contest an intrusion into his affairs before some suitably reliable court of appeal,¹⁶ this will greatly limit his vulnerability to possible intruders. By calling an intruder to account before such a court, people can ensure that any wrongful interference in their affairs will cease (and, if necessary, that the perpetrator will be punished for his wrongful treatment, as argued in the previous section). However, although the ability to take those who transgress against you to court is important, it must be stressed that in many cases such a step is to be taken only as a last resort. It is important to your dignity to know that you have this final resort at your disposal, but conflicts should preferably be resolved by other means. One of the most obvious ways to deal with an offending intruder is simply to confront her, explain that her interference is wrongful to you, and demand that she desist (see, e.g., Duff and Marshall 2006, p. 68). Non-domination is self-enforcing in this regard: if you are non-dominated, you can afford to stand up for yourself, because you know that there is no other area of your affairs in which she can retaliate for your having had the audacity to confront her. Thus, if one is non-dominated, one has discursive control (Pettit 2001a), and having discursive control enables one to resist further intrusions. However, demanding that someone ceases her interference by no means ensures that she will do so. Discursive control enables a person to take the first step in

¹⁶ Pettit discusses contestability primarily in relation to state intrusions into the affairs of citizens (Pettit 1997, pp. 183–198). There is no reason to assume, however, that contestability is limited to state interference, and similar institutions can be set up to deal with conflicts between individuals. For ease of reference, I refer to such institutions here as 'courts of appeal', but the degree to which such mediating or arbitral institutions will resemble actual courts may vary greatly.

successfully resisting wrongful interference in his affairs, but it leaves unexplained how discourse itself can then reduce such interferences. In this case, interpreting non-domination in terms of a person's moral beliefs has a clear advantage over the formulation in terms of avowed interests. Discussion and explanation may alter people's beliefs and opinions about a particular instance of interference, but such communicative practices will quite often leave one's avowed interests unaffected. In a serious discourse, both parties must have the ability to convince the other side (Crocker 1980, p. 79). The cessation of the interference is one possible outcome, but this is not the only way in which an affront can be prevented (cf. Husak 2006, p. 94). If you show me, for instance, that although it has some adverse affect on me, your interfering act was nonetheless your choice to make, or that it was necessary for the sake of others, you may succeed in lifting my moral objections to it and thereby relieve the offence. After all, like most people I am quite aware that my interests are hardly always of overriding concern; my status as a moral being that has to be treated correctly, however, has a much stronger claim to such inviolability.

Contestability and discourse are two important means for removing or reducing domination, but it is also clear that they cannot resolve all problems. As is well known, even after extensive discourse, people will quite often still disagree about the acceptability of a given action. Contestability, too, has its limits. Not every one will always be able to accept the verdict of the court of appeal where the contestation was adjudged. Nonetheless, it must be admitted that such courts can often reduce affront. If people are convinced of the integrity and authority of the court, they often accept the verdict even if it goes against them (Pettit 1997, pp. 198–199). The degree to which contestability can serve its function of reducing domination and affront depends very much on the level of congruence of the basic moral beliefs within a society. If such beliefs are fundamentally split on, for instance, the basic notions of fairness and legitimacy, it will become impossible to create a court (or court procedure) that is acceptable to all. If your views on how one may be treated by others differ radically from

those of the bulk of society, for instance, contestability loses its function. If you know beforehand that the court of appeal does not share your views on respectful treatment (suppose, for instance, that you are a radical feminist and the courts are based on a fundamentalist interpretation of religious law), there is little point in going there to contest an instance of interference.

The republican notion of dignity is not an ideal that is fully realisable in the sense that we can ever create a situation or state in which people are never vulnerable to any intrusion they deem wrongful to their person without having access to adequate means of redress, but this does not mean it is not a notion that should be furthered as much as possible. Furthermore, even in those cases where such a vulnerability cannot be avoided, it is still better to be aware of this unfortunate fact and to admit the injury this implies than to be blind to it or deny it altogether. Non-domination is not the cure for all evils, but it clearly points to an important aspect of what it means to take people serious as moral agents.

Some may object to this on the grounds that it seems to call for especially solicitous treatment of people who hold repugnant moral beliefs such as racists and bigots. To a racist, being treated as an equal to those he feels superior to is clearly an insult (let alone if they were to hold political office, for instance), but that does not seem to entitle him to any special consideration at all, as that would be incompatible with the dignity of those he deems inferior. However, this does not refute the account above. First of all, there is no problem with claiming that the bigot who is forced to treat those he deems inferior as equals, or live under their rule if they are democratically elected, is thereby humiliated. This humiliation is undoubtedly justified, but that does not make it any less humiliating to the bigot. More importantly, it shows that individual dignity is not an absolute value in the sense that it can never be justifiably intruded on (this is not incompatible, however, with the position that it is an absolute value in the sense that it can only justifiably be curtailed for the sake of dignity itself – especially that of others (cf. Hill 1992)).

Finally, some further comments must be made on the argument in favour of retributivism. In section V I argued that

retributive punishment is vital to the dignity of the victim. This may seem very unappealing to some, as it may appear that it calls for the sacrifice of one person so that the anger and desire for vengeance of the other may be satisfied. Clearly it is not a good idea to effectively hand over perpetrators to their victims for punishment. This would be likely to lead to excessive and cruel forms of punishment. However, this is not what the retributivist argument for punishment amounts to, and there are a number of elements in the notion of retribution that make clear that retributivism takes full account of the dignity and status of the perpetrator as a moral being. First, acknowledgment of the status of the perpetrator as a moral being is assured by the very fact that retribution is called for because of the offence to the dignity of the victim. As only other persons or moral beings can cause offence or become dominators, the perpetrator has to be regarded as a moral being right from the start. Furthermore, the very fact that the question of appropriate punishment comes up at all also implies that the perpetrator is regarded as a moral being. If she were not, we would simply treat her the way we would treat, for instance, animals who have been shown to pose a danger to persons (which treatment tends to be rather short, swift and sometimes brutal). Most importantly, however, it should be stressed that the level of punishment demanded by a person's moral beliefs must be separated from his desire for vengeance, or his anger. If the state ever catches the miscreant who violated the sanctity of my dwelling, my understandable desire for vengeance may well demand he be subjected to a host of most imaginative forms of punishment, but my notion of just and adequate punishment will go against such excessive violence and be satisfied much sooner. Moreover, the notion of republican dignity requires only that the aggressor has no power to interfere with impunity in the affairs of another. It does not require that punishment comes about solely at the hands of the victim.¹⁷ Ensuring republican dignity therefore does not demand that the victim gets to act out all his desires for revenge on the perpetrator. But it should be stressed that if

¹⁷ See also Pettit's endorsement of the importance of 'passive empowerment' (Pettit 2001b).

the victim feels the punishment is excessively mild, amounting to little more than the proverbial slap on the wrist, he may legitimately take this as an insult by the state. If the punishment cannot be accepted as fitting by the victim, he may well regard the transgression as an act of (partial) domination, and doubt whether the state really takes him and his status as a full moral person seriously.¹⁸ Punishment thus serves as an important communicative tool, but not primarily to the perpetrator that what she did was wrong, but to the victim (and other members of society) that no-one gets to treat him that way with impunity and thus that he is indeed a non-dominated member of society with full standing.¹⁹

¹⁸ This also explains why impunity can only be prevented by the state showing itself willing and able to inflict punishment on an offender. If, for instance, a state were to declare certain intrusions into the affairs of others illegal but subsequently fail to enforce these laws, this will do little to empower the dominated person and reduce his demeaning vulnerability – in fact, the lack of commitment to the dignity of the individual that such a callous attitude by the state expresses will oftentimes make the affront caused by such intrusions worse (cf. Roberts 2006, p. 44). An important further implication is that there is limited room in republican sentencing for mercy. If a judge or jury were to apply mercy (defined as punishing someone less than her crime warrants) in sentencing the perpetrator, the punishment will no longer suffice (assuming the victim deems the ultimate punishment too low) to prevent the intruding act from constituting an act of (partial) domination. By being merciful to the perpetrator the judge or jury communicates to the victim and all other members of society that he is not a member of full standing. Hence, if mercy is to have any place in a republican sentencing policy, the power to grant it must be placed solely in the hands of the victim, as the lower bound on the level of punishment is intimately connected to *his* dignity and standing. Only in this way is mercy possible without disempowering the victim. A potential drawback to giving the victim the power to bestow or withhold mercy, however, is that it arguably undermines the principle that like cases must be treated alike – whether it truly does so, or whether it really is to be regarded as a genuine problem if it does, is a question that unfortunately cannot be addressed here.

¹⁹ In fact we see this response in many emotional court cases. Victims who feel the perpetrator is adequately punished do not thereby feel any happier (often their attitude rather seems to be one of sad relief), but those who feel the perpetrator is inadequately punished are often most indignant and offended by the court's ruling, taking it as a personal insult.

The main objection Pettit and Braithwaite have to accounts of retributive justice is that they fail to provide a convincing reason both for why punishment is called for and why it should be proportional to the severity of the crime. I hope I have shown, however, that the very republican notion of non-domination, when analysed in its relation to the dignity and status of a person as a full moral being amongst others, provides an answer to both questions. By demanding an appropriate level of punishment, retributive justice acknowledges the dignity of both the victim and the perpetrator. The former sets a lower limit to the punishment that may be inflicted, whereas the latter sets an upper one. Perhaps retributive justice does assume without argument that these lower and upper limits are compatible, and I haven't given an account of how to measure the severity of an intrusion, but I do hope to have shown that it is possible to make sense of the notion of 'just deserts' and that the retributivist principle has a vital role to play in a republican theory that seeks to ensure the dignity of citizens through the notion of non-domination.

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